

1 J. SCOTT GERIEN, State Bar No. 184728
 2 MEGAN FERRIGAN HEALY, State Bar No. 229177
 3 DICKENSON, PEATMAN & FOGARTY
 4 809 Coombs Street
 5 Napa, California 94559
 6 Telephone: (707) 252-7122
 7 Facsimile: (707) 255-6876

8 Attorneys for Plaintiff and Counterdefendant
 9 WINE SCOUT INTERNATIONAL and
 10 Third-Party Defendant MARK POPE

11
 12
 13 UNITED STATES DISTRICT COURT
 14
 15 NORTHERN DISTRICT OF CALIFORNIA

16
 17 Wine Scout International,
 18 Plaintiff,
 19
 20 vs.
 21 Patricia Crowell,
 22 Defendant.

23 CASE NO. C07 05930 JSW

24
 25 REQUEST FOR COURT
 26 CLARIFICATION CONCERNING
 27 AMENDED NOTICE OF
 UNAVAILABILITY OF COUNSEL FOR
 DEFENDANT, COUNTERCLAIMANT,
 AND THIRD PARTY PLAINTIFF,
 PATRICIA CROWELL

28
 29 Patricia Crowell, an individual
 30 Counterclaimant
 31
 32 vs.
 33 Wine Scout International, a California
 34 corporation,
 35 Counterdefendant.

36
 37 Patricia Crowell, an individual
 38 Third Party Plaintiff,
 39
 40 vs.
 41 Mark Steven Pope, aka Mark S. Pope and
 42 aka Mark Pope, individually and as he does
 43 business under the trade name and style of
 44 Bounty Hunter, Bounty Hunter Rare Wine,
 45 and/or Bounty Hunter Rare Wine and
 46 Provisions,

47
 48 Third Party Defendant.

1 Plaintiff and Counterdefendant, Wine Scout International and Third-Party Defendant
2 Mark Pope, hereby seek clarification of the Court's stated position concerning the Amended
3 Notice of Unavailability of Counsel for Defendant wherein counsel for Defendant indicates
4 that he "will be away from and unavailable to be reached by his office for all purposes, or
5 notices of any kind, appearing in Court, responding to *ex parte* applications, participating in
6 telephone conferences, and/or attending depositions."

7 Based on the Court's statements during the Case Management Conference, it was
8 Plaintiff's and Third-Party Defendant's understanding that counsel for Defendant could not
9 simply remove himself from availability and thereby put a stop to all proceedings in the case,
10 yet this is effectively what counsel for Defendant has done.

11 Pursuant to the Court's instruction concerning the parties' obligations to resolve
12 discovery disputes, Plaintiff and Third-Party Defendant were attempting to cooperate with
13 Defendant to address discovery objections raised by Defendant asserting that discovery in this
14 case was not yet open for all purposes and that Plaintiff and Counterdefendant therefore could
15 not serve interrogatories and discovery requests upon Defendant. However, before the parties
16 could meet and confer in person as required by this Court, counsel for Defendant filed the
17 Amended Notice of Unavailability and declared himself unavailable to meet and confer until
18 his return to his office in two weeks time on May 21, 2008. When counsel for Plaintiff and
19 Counterdefendant inquired as to the availability of another attorney in Mr. Hollman's office to
20 meet and confer in Mr. Hollman's absence, Mr. Hollman did not indicate that any other
21 attorney would be available.

22
23
24
25
26
27

1 Plaintiff and Counterdefendant understand that the Court cannot force counsel for
2 Defendant to personally appear in the next two weeks to meet and confer with counsel for
3 Plaintiff and Counterdefendant, despite what Plaintiff and Counterdefendant understood to be
4 the Court's clear direction to counsel for Defendant at the Case Management Conference that
5 such Notices of Unavailability were not accepted in the Federal Courts and that counsel could
6 not simply put a stop to the litigation by making himself unavailable. However, Plaintiff and
7 Counterdefendant would appreciate the Court's clarification as to whether discovery in this
8 matter is open for all purposes subject to the limitations of the Federal Rules of Civil Procedure
9 so that Plaintiff and Counterdefendant may proceed with the service of interrogatories,
10 document requests and requests for admission during counsel for Defendant's unavailability.

11
12 Dated: May 8, 2008

13 Respectfully submitted,

14 DICKENSON, PEATMAN & FOGARTY

15 By

16 J. Scott Gerien
Megan Ferrigan Healy

17
18 809 Coombs Street
19 Napa, California 94559
20 Telephone: 707-252-7122
21 Facsimile: 707-255-6876

22 Attorneys for Plaintiff,
23 Wine Scout International

24
25
26
27